IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

Crl.MC.No. 2358 of 2007()

CC.613/2004 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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PETITIONER:

K.OMMEN PANICKER,S/O.KOSHY PANICKER,
PALAVILA THEKKATHIL,MARANADU MURI,
PAVITHRESWARAM VILLAGE,KOLLAM.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM.

2. K.M.THOMAS PANICKER,
S/O.MATHEW PANICKER,
KALLARACKAL VEEDU,
KANJIRAKODU CHERY,
MULAVANA VILLAGE,
KOLLAM.

BY P.P. SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. NO. 2358 OF 2007

Dated this the 24th day of July, 2007

ORDER

The petitioner is the accused in a private complaint filed by the 2nd respondent alleging the commission of the offences punishable, inter alia, under Sec.380 of the IPC. The petitioner has already entered appearance before the learned Magistrate and has been enlarged on bail, it is submitted. According to the petitioner, a civil dispute is pending between the parties. The private complaint is only an offshoot of that civil case. It is a vexatious complaint and the allegations raised are groundless. The petitioner is being put to unnecessary vexation and harassment because of the pendency of this petition. The learned counsel for the petitioner submits that the civil court has already rendered Annexure-5 judgment in the matter.

2. Has the petitioner sought discharge under Sec.245(2)

of the Cr.P.C.? If the allegations are groundless, the petitioner can certainly seek discharge under Sec.245(2) of the Cr.P.C. The learned counsel for the petitioner submits that the discharge has not been sought till now. The learned counsel for the petitioner submits that if insistence on the personal appearance of the petitioner were made, that would cause unnecessary harassment and inconvenience to the petitioner. I am satisfied that appropriate directions can be issued in the matter.

3. This Crl.M.C. is, in these circumstances, dismissed; but with the observation that it shall be open to the petitioner to seek discharge under Sec.245(2) and/or Sec.245(1) of the Cr.P.C. Till then, the petitioner shall be entitled to apply for exemption and appear through his counsel. Unless his personal appearance be absolutely essential for the progress of the case, such personal appearance shall not be insisted by the learned Magistrate till a decision is taken on the question of discharge under Sec.245(1) and/or Sec.245(2) of the Cr.P.C.

Sd/-

(R. BASANT, JUDGE)

Nan/ //true copy// P.S. To Judge